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FILED

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SECRETARY, BOARD OF
OIL, GAS & MINING

**BEFORE THE BOARD OF OIL, GAS & MINING
DEPARTMENT OF NATURAL RESOURCES
STATE OF UTAH**

IN THE MATTER OF THE PETITION OF
THE DIVISION OF OIL, GAS & MINING
FOR AN ORDER TO FORFEIT THE
RECLAMATION SURETY POSTED BY
GULF INSURANCE COMPANY, AND
TO ENTER UPON AND PERFORM
RECLAMATION AT MAGNESIUM
CORPORATION OF AMERICA
("MAGCORP, INC.") MINING
OPERATIONS AT THE KNOLLS
SOLAR EVAPORATION PONDS,
TOOELE COUNTY, UTAH

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND ORDER**

Docket No. 2003-008

Cause No. M/045/022

THIS CAUSE came on regularly for hearing before the Utah Board of Oil, Gas and Mining ("Board") on Wednesday, August 27, 2003, at the hour of 10:00 a.m. in the Auditorium of the Department of Natural Resources, 1594 West North Temple, Suite 1050, Salt Lake City, Utah. The following Board members were present at and participated in the hearing: W. Allan Mashburn, Chairman, James Peacock, Robert J. Bayer, Kent R. Petersen, Douglas E. Johnson, and Samuel Quigley. Stephen G. Schwendiman, Assistant Attorney General represented the Board of Oil, Gas and Mining. Appearing for the Division of Oil, Gas, and Mining ("Division"), were Wayne Hedberg, Division Permit Supervisor; James Kohler, Chief, Solid Minerals Branch, Bureau of Land Management, United States

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Department of Interior; and Glenn A. Carpenter, Field Office Manager, Bureau of Land Management, United States Department of Interior. The Division of Oil, Gas, and Mining was represented by Steven F. Alder, Assistant Attorney General.

Providing comments were Thomas B. Faddies, Assistant Director of Minerals, for the School and Institutional Trust Lands Administration; Howard White, Tooele County Commissioner; Utah State Senator, Howard Stephenson; and Utah State Representative, James R. Gowans. No persons or parties appeared on behalf of MagCorp, or Gulf Insurance Company. No persons otherwise appeared in opposition to the Division's Request for Agency Action in this matter.

At the close of the hearing, the Board left the auditorium to deliberate and returned to announce its decision unanimously approving the Division's Request for Agency Action.

NOW, THEREFORE, the Board having fully considered the testimony and evidence at the August 27, 2003 hearing, being fully advised, and good cause appearing, hereby makes the following Findings of Fact, Conclusions of Law, and Order:

FINDINGS OF FACT

1. Notices of the time, place, and purpose of the Board's regularly scheduled, August 27, 2003 hearing were mailed first-class mail, postage prepaid, to the parties identified on the Request for Agency Action on July 10, 2003; and additional notice was mailed on August 8, 2003 by first-class mail, postage prepaid to the persons identified on the Notice of Hearing pursuant to Utah Administrative Code Rules R641-104-135 and R649-5-1(2.9). Notice was also published in the Salt Lake Tribune, Deseret News, and Tooele Transcript - Bulletin pursuant to the requirements of Utah Administrative Code Rule R641-106-100 (2002).

2. Additional notice of the Request for Agency Action was given to Gulf Insurance Company by service of the Request for Agency Action by the Salt Lake County Sheriff upon CT Corporations System for Gulf Insurance on July 16, 2003.

3. On July 10, 2003, pursuant to the provisions of Utah Administrative Code R641-105-700 (2002), the Division of Oil, Gas and Mining ("Division") filed its Request for Agency Action with the Board of Oil, Gas, and Mining ("Board") seeking an order finding that mining has ceased, the mining permit has terminated, and that the surety posted by Gulf Insurance Company be forfeited; authorizing the Utah Attorney General to take such action as is necessary to require that Gulf Insurance Company perform the reclamation obligation, or pay to the Division the amount posted as bond for reclamation; and further authorizing the Division to enter upon and perform reclamation on land known as the Knolls Solar Ponds, in Tooele County, Utah.

4. On July 26, 1990, Magnesium Corporation of America ("MagCorp") filed with the Division Bond Number GA54 104 13B (**Exhibit A**) in the amount of \$110,000.00 with Gulf Insurance Company as Surety.

5. The bond was provided as required under the Mined Land Reclamation Act ("Act") (Utah Code §§ 40-8-1 et seq. (2002)) for the benefit of the Division to secure the obligations of MagCorp to reclaim the lands affected by its mining operations in accordance with the Mining and Reclamation Contract (**Exhibit B**) which consist of 176 acres identified in Division Mine Permit No. M/045/022 as the Knolls Solar Evaporation Ponds ("Knolls Facility").

6. On December 11, 2000, the Division received a letter from the United States Bureau of Land Management ("BLM") asking the Division to increase the reclamation surety amount held for the MagCorp Knolls Facility and conveying to the Division the BLM's determination, based on

the records of production that the Knolls Facility was no longer in operation. See letter of December 11, 2000 (**Exhibit C**).

7. On January 25, 2001, the Division by letter (**Exhibit D**) notified MagCorp of the need to update the reclamation plan and to post an additional surety in the amount of \$6,051,640.00.

8. MagCorp protested the amount of surety requested and although the amount requested was subsequently reduced by the Division, MagCorp failed to post any additional surety.

9. On August 2, 2001, MagCorp filed bankruptcy as Case No. 01-14312 (REG) in the United States Bankruptcy Court for the Southern District of New York and an Order for Relief was entered on that date.

10. The bankruptcy court entered an order on June 17, 2002, approving sale of substantially all the assets of MagCorp to an entity known as U.S. Magnesium. This sale did not include the assets at the Knolls Solar Ponds.

11. Neither MagCorp as debtor nor the trustee have pursuant to the requirements of the Bankruptcy laws assumed the mining permit, leases, or right-of-way under which MagCorp conducted mining operations at the Knolls Facility.

12. On May 13, 2003, the United States Bankruptcy Court for the Southern District of New York entered its Order modifying the automatic stay in that matter permitting the Division to pursue this action to recover proceeds of the bond posted to secure reclamation of the mined lands affected by mining operations at the Knolls Solar Evaporation Ponds. (**Exhibit F**)

13. On or about August 14, 2002, an inspection of the Knolls Facility was made by the BLM. Jim Kolher of the BLM provided the Board with the pictures taken at that time which were

admitted as evidence in the matter to demonstrate the size and nature of the facilities at the Knolls Solar Ponds.

14. Mr. Kohler provided testimony and pictures to show that: (a) the operations had been abandoned and that pumps and other equipment necessary to the operation of the mine had been removed; (b) the evaporation ponds have exhausted their useful life and would require substantial reworking and investment to be used in any future solar operation to produce magnesium chloride salts or brine; and (c) any brine used for future production would come from the ground water beneath the land and would require a mineral lease from the BLM.

15. The following actions by MagCorp are a breach of its obligations under the Reclamation Contract and the Mined Land Reclamation Act:

- (a) It has removed the pumps and other equipment from the project area, failed to maintained the facilities, and ceased all operations at Knolls since at least 2000;
- (b) It has failed to affirm in the bankruptcy court and has otherwise rejected the leases and the right-of-way agreement with third parties, which leases and right-of-way agreement are necessary to occupy the lands used for the operation of the Knolls Solar Ponds so as to preclude the resumption of operations at the Knolls Solar Ponds;
- (c) It has for 2 years failed and refused to file an annual report or pay the annual fee as required by the statutes and rules to maintain the mining permit for the Knolls Facility;
- (d) It has failed to perform any reclamation of the lands affected by the mining operations at the Knolls Facility.

- (e) As a result of the bankruptcy, failure to affirm the leases and the filings in the bankruptcy, it is apparent that MagCorp is currently financial unable to timely conduct the reclamation of the disturbed area in accordance with the Act and reclamation plan as required by the Reclamation Contract;

16. The abandoned premises are not adequately fenced and are accessible to use by those with off-road vehicles and others and contain many risks to the public safety including: (a) abandoned materials and equipment that constitute an attractive nuisance, (b) dangerous conditions such as steep and unstable canal embankments, pump platforms and other equipment that is rusting with unprotected openings and potentials for falls or other injury, and (c) unfenced ponds with highly saline waters.

17. The abandoned premises also may provide access to the Air Force bombing range and further dangers associated with such unauthorized access to those lands.

CONCLUSIONS OF LAW

1. Notice of the August 27, 2003 hearing of the Board was given as required by the applicable statutes and rules of the Board to all parties and persons with an interest therein.

2. The Division has authority to bring this action to the Board pursuant to Utah Code Annotated § 40-8-5 (1998).

3. The Board has authority to hear and act in this matter pursuant to Utah Code Annotated §§ 40-8-5 to 8 and § 40-8-14(7) (1998).

4. The Board has jurisdiction over Gulf Insurance Company and the bond held for the benefit of the Division pursuant to Utah Code §§ 78-27-22 through 28 (2003) and Utah Code

§ 31A-1-105 (2003), the terms of the affidavit of qualification, and the personal service upon the agent for Gulf Insurance Company.

5. MagCorp is in breach of its obligation under the Reclamation Contract and the Mined Land Reclamation Act.

6. The Reclamation Contract provides that, upon breach of the Contract by the Operator and the cessation of mining operations, the Division may upon notice and opportunity for hearing seek forfeiture of the surety.

7. The Mined Land Reclamation Act, Utah Code Annotated §§ 40-8-1 et seq. (2002), governs the mining operations and reclamation of non-coal lands in the State of Utah and requires that mined lands be reclaimed so as to prevent conditions detrimental to the general safety and welfare of the citizens of the state.

8. The objectives of the Act are: “to return the land within a reasonable amount of time to a stable ecological condition compatible with past, present, and probable future local land uses; to minimize or prevent . . . environmental degradation caused by mining operations to the ecologic and hydrologic regimes . . . to meet other pertinent state and federal regulations regarding air and water quality standards and health and safety criteria; and to minimize or prevent future hazards to public safety and welfare” (Utah Code Annotated § 40-8-12 (1998)).

9. To insure completion of the reclamation requirements, a surety must be posted in an amount determined by the Division prior to commencement of mining, and liability of the surety continues until released by the Division. (Utah Code Annotated § 40-8-14 (1998)).

10. Under Utah Code § 40-8-14(7)(a) (1998): “If the operator . . . fails or refuses to carry out the necessary land reclamation as outlined in the approved notice of intention, the Board may after notice and hearing, declare any surety filed for this purpose forfeited.”

11. Utah Administrative Code R647-4-114 (Failure to Reclaim) (2002), provides: “If the operator fails or refuses to conduct reclamation as outlined in the approved notice of intention, the Board may, after notice and hearing, order that reclamation be conducted by the Division and that: . . . (2) any surety filed for this purpose be forfeited. With respect to the surety filed with the Division, the Board shall request the Attorney General to take the necessary legal action to enforce and collect the amount of liability”.

12. MagCorp, as operator of the Knolls Solar Ponds Facility, has failed and refused, and continues to fail and refuse to perform any of the reclamation required by the reclamation plan.

13. Utah Code Annotated § 40-8-12(1) (1998), Utah Administrative Code R647-4-107(6) and R647-4-110 (2002), and the Reclamation Contract require that reclamation work occur either concurrently with mining or within a reasonable amount of time after cessation of operations.

14. The obligation to reclaim public safety and welfare hazards arose and existed during mining operations and should be remedied as soon as possible; reclamation on the remainder of the disturbed areas should have begun upon cessation of mining, and should begin as soon as practicable.

15. There is no legal or practical reason to await or expect further actions by MagCorp.

16. The public safety and welfare warrant immediate action in this matter so as to permit the Division to remedy the egregious land disturbances and hazards as soon as possible.

ORDER

The BOARD HEREBY ORDERS AS FOLLOWS:

1. The surety, Gulf Insurance Company, is to promptly complete the reclamation required by the Division, or if it fails to do so, Bond Number GA54 104 13B (Exhibit A) in the amount of \$110,000.00 shall be forfeited to the Division to be used for reclamation of the Knolls Solar Evaporation Ponds Facility.
2. The Division is authorized to take such action through the office of the Utah Attorney General as may be necessary and appropriate to obtain performance of reclamation by the surety or to recover the funds from Gulf Insurance Company in the amount of \$110,000.00 as posted and held as Bond Number GA54 104 13B (Exhibit A).
3. The Division is authorized to enter upon the Knolls Solar Evaporation Pond properties to commence reclamation as it determines to be appropriate and necessary to protect the public welfare and safety, and to commence such additional reclamation as is practicable and as amount of funds obtained from the surety will permit.

ISSUED this 24 day of September, 2003.

STATE OF UTAH
BOARD OF OIL, GAS AND MINING

By W. Allan Mashburn
W. Allan Mashburn, Chairperson

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER for Docket No. 2003-008, Cause No. M/045/022 to be mailed with postage prepaid, this 25th day of September, 2003, to the following:

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